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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 OLIVER HILSEN RATH,

15 Plaintiff,

16 v.

17 EQUITY TRUST (JERSEY) LIMITED,  
18 CANDOVER INVESTMENTS PLC AND  
DOES 1-10,

19 Defendants.  
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Case No. 07-4162 (CW)

**REPLY OF SPECIALLY APPEARING  
DEFENDANT CANDOVER  
INVESTMENTS PLC IN SUPPORT OF  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION AND  
INSUFFICIENT SERVICE OF PROCESS**

Date: November 1, 2007  
Time: 2:00 p.m.  
Ct rm: 2, 4th floor

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1 **I. INTRODUCTION**

2 Plaintiff's Opposition to the Motion to Dismiss of Candover Investments PLC ("Opposition" or  
3 "Opp.") fails to remedy the shortcomings of the jurisdictional allegations in Plaintiff's Complaint.  
4 Indeed, Plaintiff fails to identify a single contact of Candover Investments PLC with California or the  
5 United States to support this Court's exercise of general jurisdiction over Candover Investments PLC.  
6 Similarly, Plaintiff fails to identify a single act by Candover Investments PLC in California or the  
7 United States out of which Plaintiff's claims against Candover Investments PLC arise to support this  
8 Court's exercise of specific jurisdiction over Candover Investments PLC.

9 Plaintiff improperly attempts to incorporate by reference a pleading Plaintiff and his wife filed  
10 in a separate related action "in its entirety as to matters of jurisdiction." Opp. at 2. However, neither  
11 the Federal Rules of Civil Procedure, nor federal case law supports the incorporation by reference of  
12 pleadings filed in separate actions. Moreover, even if the Court were to permit Plaintiff to incorporate  
13 by reference this pleading as to matters of jurisdiction (which it should not), Plaintiff alleged no facts  
14 in this pleading sufficient to support this Court's exercise of personal jurisdiction over Candover  
15 Investments PLC.

16 Plaintiff then argues that Candover Investments PLC controls Equity Trust (Jersey) Limited  
17 ("Equity Trust"), seeking to hold Candover Investments PLC responsible for the allegedly wrongful  
18 acts committed by Equity Trust. Plaintiff not only fails to allege facts sufficient to support his  
19 allegations of control, but wrongly asserts that whether Equity Trust is the alter ego of Candover  
20 Investments PLC bears no relevance to the jurisdictional analysis. However, absent factual allegations  
21 demonstrating that Equity Trust is the alter ego of Candover Investments PLC, the Court may not  
22 impute Equity Trust's acts to Candover Investments PLC. Moreover, Plaintiff concedes that the  
23 majority of the allegedly wrongful acts occurred before Candover Investments PLC acquired its  
24 interest in Equity Trust Holdings SARL, which owns an indirect interest in Equity Trust. Thus, Equity  
25 Trust's acts provide no basis to support this Court's exercise of personal jurisdiction over Candover  
26 Investments PLC.

Finally, Plaintiff concedes that he failed to properly serve Candover Investments PLC pursuant to the procedures set forth in the Hague Convention or Federal Rule of Civil Procedure 4 ("Rule 4"). Therefore, the Court lacks personal jurisdiction over Candover Investments PLC.

For all these reasons, Candover Investments PLC respectfully urges the Court to grant its motion to dismiss with prejudice.

## II. ARGUMENT

### A. Plaintiff May Not Incorporate By Reference Pleadings From Separate Actions

Plaintiff seeks to incorporate by reference "in its entirety as to matters of jurisdiction" a pleading ("Document 50") he and his wife filed in a separate action, *Hilsenrath et al. v. Equity Trust et al.*, United States District Court, Northern District of California, San Francisco Division, No. C-07-3312 CW (filed June 25, 2007) ("*Equity Trust I*").<sup>1</sup> Opp. at 2. However, the Federal Rules of Civil Procedure only permit references to pleadings and exhibits submitted in the same case.<sup>2</sup> Fed. R. Civ. Proc. 10(c); see also *Texas Water Supply Corp. v. Reconstruction Finance Corp.*, 204 F.2d 190, 196 (5th Cir. 1953). Moreover, federal courts addressing this precise issue have repeatedly rejected parties' efforts to incorporate by reference pleadings from separate actions. See *Texas Water Supply Corp.*, 204 F.2d at 196 (no rule permits a party to incorporate by reference a pleading in a separate action); *Davis v. Bifani*, No. 07-cv-00122-MEH-BNB, 2007 U.S. Dist. LEXIS 30080, \*3 (D. Colo. April 24, 2007) ("the Court does not believe that it is proper to incorporate by reference wholesale the allegations in a complaint in a completely separate action, even if that action is between the same parties").<sup>3</sup> The

<sup>1</sup> Plaintiff also improperly refers the Court to claims and counter-claims he alleged in two separate actions (Opp. at 2), without explicitly asking the Court to incorporate by reference any particular pleading filed in those actions. For the reasons stated below, the Court should deny Plaintiff's implicit request to incorporate by reference other pleadings from separate actions.

<sup>2</sup> Moreover, Fed. R. Civ. Proc. 10(c) requires a party seeking to incorporate a pleading by reference to clearly identify the statements from the pleading the party seeks to incorporate and to attach the pleading. See *Shelter Mutual Ins. Co. v. Public Water Supply Dist. No. 7 of Jefferson County, Missouri*, 747 F.2d 1195, 1198 (8th Cir. 1984); *Levitch v. Columbia Broadcasting Sys. Inc.*, 94 F.R.D. 292, 294 (S.D.N.Y. 1982). Plaintiff satisfied neither of these requirements here.

<sup>3</sup> Indeed, the instant case perfectly illustrates why federal courts reject requests to incorporate by reference pleadings from another action. In Document 50, Plaintiff opposed eight defendants' motions to dismiss for lack of personal jurisdiction, rendering many of the jurisdictional arguments in Document 50 inapplicable here. Plaintiff's request implicitly requires the Court to determine which jurisdictional arguments asserted in Document 50 Plaintiff seeks to incorporate. No rule requires such an undertaking by the Court. See *Davis*, 2007 U.S. Dist. LEXIS 30080, \*3.



1 Court should not, therefore, permit Plaintiff to incorporate by reference any pleading, including  
2 Document 50, from a separate action.

3 **B. This Court Cannot Exercise Personal Jurisdiction Over Candover Investments**  
4 **PLC Because Candover Investments PLC Lacks The Requisite Contacts With**  
5 **California**

6 1. General Jurisdiction Does Not Exist

7 Plaintiff offers no evidence of any contacts of Candover Investments PLC with California in his  
8 Complaint or Opposition. Plaintiff thus cannot contest that the only activity of Candover Investments  
9 PLC in California is a passive investment in Lombard Investments, Inc., a California corporation. But  
10 “[e]ngaging in commerce with residents of the forum state is not in and of itself the kind of activity  
11 that approximates physical presence within the state’s borders.” *Bancroft & Masters, Inc. v. Augusta*  
12 *Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000), *overruled on other grounds by Yahoo! Inc. v. La Ligue*  
13 *Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006); *see also Tuazon v. R.J.*  
14 *Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006) (“a defendant must not only step through  
15 the door, it must also sit down and make itself at home”). Tellingly, Plaintiff makes no attempt to  
16 argue that this single investment constitutes “substantial” or “continuous and systematic” activity in  
17 California such that it is reasonable for this Court to exercise personal jurisdiction over Candover  
18 Investments PLC. *See Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1287  
19 (9th Cir. 1977).

20 In light of the Ninth Circuit’s exacting standard for general jurisdiction, and Plaintiff’s apparent  
21 concession that a single passive investment in a California corporation does not confer general  
22 jurisdiction, this Court cannot exercise general jurisdiction over Candover Investments PLC. *See*  
23 *Amoco Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 851n.3 (9th Cir. 1993) (noting that the  
24 Ninth Circuit has “regularly . . . declined to find general jurisdiction even where the contacts were  
25 quite extensive”).

26 2. Specific Jurisdiction Does Not Exist

27 To support this Court’s exercise of specific jurisdiction over Candover Investments PLC,  
28 Plaintiff must allege that his claims arise out of an act Candover Investments PLC performed or



business it conducted in California, and that the exercise of personal jurisdiction is reasonable. *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986). But Plaintiff does not allege that his claims arise out of any direct act by Candover Investments PLC, let alone an act by Candover Investments PLC in California.<sup>4</sup> Instead, Plaintiff argues that the allegedly wrongful acts of Equity Trust support this Court's exercise of specific jurisdiction over Candover Investments PLC. Plaintiff's argument fails for two independent reasons.

First, Plaintiff's argument consists of nothing more than conclusory allegations that Candover Investments PLC controls Equity Trust. *See* Compl. ¶ 16 (Candover Investments PLC "is a UK corporation that controls Equity Trust"); Opp. at 2 (Candover Investments PLC "is an integral part of [Equity Trust's] management").<sup>5</sup> However, "[a]t the pleading stage, conclusory allegations that a corporate entity is the alter ego of the defendant are insufficient to survive a motion to dismiss." *See Rae Systems, Inc. v. TSA Systems, Ltd.*, No. C 04-2030 FMS, 2005 U.S. Dist. LEXIS 39450, \*9-10 (N.D. Cal. June 24, 2005).

Rather than offering factual support for the allegations of control, Plaintiff argues that the alter ego doctrine bears no relevance to the jurisdictional analysis. Opp. at 2-3. But to impute Equity Trust's acts to Candover Investments PLC requires evidence that Equity Trust is the alter ego of Candover Investments PLC.<sup>6</sup> *See id.* at \*8. Plaintiff's failure to present any such evidence defeats his

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<sup>4</sup> Although Plaintiff's Opposition seeks to attribute acts such as the alleged destruction of documents to "defendants" (*see e.g.* Opp. at 3), Plaintiff alleges nowhere in the Complaint or Opposition any wrongful act by Candover Investments PLC. Moreover, Plaintiff disingenuously attributes to Candover Investments PLC acts which occurred before Candover Investments PLC even acquired its indirect passive interest in Equity Trust. For example, Plaintiff argues "defendants" established the Firefly Trust "on the basis of fraud" in 2001 (Opp. at 7), when in fact, as Plaintiff admits, Candover Investments PLC owned no interest in Equity Trust in 2001 (Compl. ¶ 16).

<sup>5</sup> Plaintiff falsely claims that Candover Investments PLC "carr[ies] 100% of Equity Trust's value" on its books, when in fact, Candover Investments PLC owns an approximate 5% interest in Equity Trust Holdings SARL, which owns an indirect interest in Equity Trust. *See* Declaration of Andrew Moberly in Support of Motion of Specially Appearing Defendant Candover Investments PLC to Dismiss ¶ 14. The interest Candover Investments PLC owns in Equity Trust Holdings SARL has varied between 5.2% and 5.5% since 2003. *Id.*

<sup>6</sup> Although Plaintiff's Complaint fails to allege a conspiracy, Plaintiff attempts to incorporate by reference his conspiracy claim from a pleading he filed in a separate action (Opp. at 2) to hold Candover Investments PLC responsible for Equity Trust's allegedly wrongful acts under a conspiracy theory of jurisdiction. But Plaintiff may not incorporate by reference pleadings from other actions. *See infra* Section I.A. Moreover, "the majority of courts in California have held that the forum-related activity of co-conspirators cannot be attributed or imputed to nonresident defendants." *MMCA Group*,

1 claim that the acts of Equity Trust support this Court's exercise of specific jurisdiction over Candover  
2 Investments PLC. *See infra* Section II.E.1.a.

3 Second, Plaintiff concedes that the majority of allegedly wrongful acts committed by Equity  
4 Trust occurred before 2003, when Candover Investments PLC acquired its interest in Equity Trust  
5 Holdings SARL. Compl. ¶¶ 29-63.

6 Finally, even if the Court attributes the acts of Equity Trust to Candover Investments PLC to  
7 support its exercise of personal jurisdiction over Candover Investments PLC (which it should not), a  
8 reasonableness analysis compels a contrary result. Candover Investments PLC is a holding company  
9 based in the United Kingdom and conducts no business in California. The burden of defending an  
10 action in California alone renders the exercise of personal jurisdiction unreasonable. *See Asahi Metal*  
11 *Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987) ("The unique burdens placed upon one  
12 who must defend oneself in a foreign legal system should have significant weight in assessing the  
13 reasonableness of stretching the long arm of personal jurisdiction over national borders."); *Rano v.*  
14 *Sipa Press, Inc.*, 987 F.2d 580, 588 (9th Cir. 1993) ("Litigation against an alien defendant requires a  
15 higher jurisdictional barrier than litigation against a citizen from a sister state.").

16 In sum, this Court should not exercise specific jurisdiction over Candover Investments PLC  
17 because Plaintiff failed to establish that Candover Investments PLC directed an activity at California or  
18 its residents out of which his claims arise, or that it would be reasonable for this Court to exercise  
19 personal jurisdiction.

20 **C. Plaintiff Failed to Show That The National Contacts of Candover Investments**  
21 **PLC Support This Court's Exercise of Personal Jurisdiction**

22 Plaintiff argues that Candover Investments PLC has "solid contacts with the United States and  
23 [has] the United States at the top of [its] financial priorities" (Opp. at 9) but provides no evidence of  
24 the national contacts of Candover Investments PLC. Plaintiff further fails to argue how any supposed  
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27 *Ltd. v. Hewlett-Packard Co.*, No. C-06-7067 MMC (EMC), 2007 U.S. Dist. LEXIS 37315, \*21 (N.D.  
28 Cal. May 8, 2007).

1 national contacts support this Court's exercise of personal jurisdiction over Candover Investments  
2 PLC.

3 Indeed, Plaintiff does not contest the inapplicability of Rule 4(k)(2). Rule 4(k)(2) requires  
4 Plaintiff to prove that: (1) his claims arise out of federal law; (2) the defendant is not subject to the  
5 personal jurisdiction of any state court of general jurisdiction; and (3) the federal court's exercise of  
6 personal jurisdiction comports with due process. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1159 (9th  
7 Cir. 2006). Plaintiff nowhere disputes his burden to satisfy these requirements, nor his failure to satisfy  
8 them. For the reasons stated herein and in the Motion to Dismiss of Candover Investments PLC, the  
9 Court may not exercise personal jurisdiction pursuant to Rule 4(k)(2).

10 Moreover, federal courts do not have nationwide personal jurisdiction; "[a] federal court has  
11 powers of personal jurisdiction as broad as the courts of the state in which it sits, but no broader."  
12 *Abrams Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1104 (C.D. Cal. 2001) (citing *Omni Capital*  
13 *International, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104-05 (1987)); see also *Doe v. Unocal*  
14 *Corp.*, 27 F. Supp. 2d 1174, 1183 (C.D. Cal. 1998) *aff'd* *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir.  
15 2001). However, in cases that arise out of statutes which permit nationwide or worldwide service of  
16 process, so long as the properly served defendant has minimum contacts with the United States as a  
17 whole, the defendant may be subject to personal jurisdiction in any federal district. See *Doe v. Unocal*  
18 *Corp.*, 27 F. Supp. 2d at 1182; *Bourassa v. Desrochers*, 938 F.2d 1056, 1058 (9th Cir. 1991). Here,  
19 Plaintiff's claims against Candover Investments PLC do not arise under any statute authorizing  
20 worldwide service of process so the national contacts of Candover Investments PLC are irrelevant to  
21 the jurisdictional analysis.

22 **D. The Court Lacks Jurisdiction Over Candover Investments PLC For the**  
23 **Independent Reason That Plaintiff Failed To Properly Serve Candover**  
24 **Investments PLC**

25 "Before a federal court may exercise personal jurisdiction over a defendant, the procedural  
26 requirement of service of [process] must be satisfied." *Omni Capital International, Ltd. v. Rudolf Wolff*  
27 *& Co., Ltd.*, 484 U.S. 97, 104 (1987). Rule 4 and the Hague Convention on the Service Abroad of  
28

Judicial and Extra-judicial Documents in Civil or Commercial Matters<sup>7</sup> (“Hague Convention”) govern service in the instant action. Plaintiff does not dispute that he tried to serve Candover Investments PLC via Federal Express without obtaining the Court’s permission, and that his method of service failed to satisfy the requirements of Rule 4.<sup>8</sup> Nor does Plaintiff dispute that he failed to comply with the provisions of the Hague Convention.<sup>9</sup> See e.g. *Floyveyor Int. ’l Ltd. v. Superior Ct.*, 59 Cal. App. 4th 789, 794 (1997); *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1136 (1996). Accordingly, because Plaintiff failed to properly serve Candover Investments PLC, the Court lacks personal jurisdiction over Candover Investments PLC.

**E. None of the Jurisdictional Arguments Plaintiff Made in Document 50 Support This Court’s Exercise of Personal Jurisdiction Over Candover Investments PLC**

For the reasons set forth above (*see supra* Section II.A.), the Court need not address the jurisdictional arguments that Plaintiff erroneously sought to incorporate by reference from Document 50.<sup>10</sup> However, if the Court is inclined to address these arguments, they compel the same result because Plaintiff failed to allege facts sufficient to support this Court’s exercise of personal jurisdiction over Candover Investments PLC.

<sup>7</sup> 20 U.S.T. 1361, 658 U.N.T.S. 163, T.I.A.S. No. 6638, 28 U.S.C.A. (Appendix following Fed. R. Civ. Proc. 4 (2007)).

<sup>8</sup> Rule 4 authorizes service by international mail only “if sent by the clerk of the court” or “if directed by the court”. See Fed. R. Civ. Proc. 4(f).

<sup>9</sup> The Hague Convention authorizes service by a Central Authority. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

<sup>10</sup> The Court also need not address Plaintiff’s meritless claim that Candover Investments PLC dramatically increased its reported business with the United States in the declarations of Andrew Moberly filed in support of the motion of Candover Investments PLC to dismiss Plaintiff’s complaint in *Equity Trust I* and in support of its reply to Document 50. Moreover, as discussed above (*see supra* Section II.C.), the national contacts of Candover Investments PLC are not relevant to the jurisdictional analysis, and the parties agree that the passive interest Candover Investments PLC owns in Lombard Investments Inc. is the only contact of Candover Investments PLC with California (*see supra* Section II.B.1.).

1                   1.     Other Entities' Contacts With California Do Not Subject Candover Investments  
 2                   PLC to Personal Jurisdiction<sup>11</sup>

3                   Plaintiff seemingly asked the Court to impute the contacts of entities in which Candover  
 4 Investments PLC invested and the contacts of its subsidiaries to Candover Investments PLC under the  
 5 doctrines of alter ego or agency. But Plaintiff failed to establish that any of these entities are the alter  
 6 egos or agents of Candover Investments PLC.

7                   a)     Plaintiff Failed to Prove Alter Ego

8                   To prove alter ego, Plaintiff must show that: (1) there is "such a unity of interest and ownership  
 9 between the corporation and its equitable owner that the separate personalities of the corporation and  
 10 the shareholder do not in reality exist"; and (2) the failure to disregard their separate identities would  
 11 lead to "an inequitable result". *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 538  
 12 (2000); *see also American Telephone & Telegraph Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586,  
 13 591 (9th Cir. 1996). When applying the alter ego doctrine, courts consider the "commingling of funds  
 14 and other assets of the two entities, the holding out by one entity that it is liable for the debts of the  
 15 other, identical equitable ownership in the two entities, use of the same offices and employees, and use  
 16 of one as a mere shell or conduit for the affairs of the other." *Sonora Diamond*, 83 Cal. App. 4th at  
 17 538-39.

18                  None of these factors are present here. With respect to Equity Trust, Plaintiff again offered  
 19 only conclusory allegations that Candover Investments PLC controls Equity Trust. *See* Document 50  
 20 at 17 (Candover Investments PLC acts as the "*de facto* management" of Equity Trust).<sup>12</sup> However,  
 21 "[a]t the pleading stage, conclusory allegations that a corporate entity is the alter ego of the defendant  
 22

23                  <sup>11</sup> Because Plaintiff's claims fail to implicate the application of the national contacts test (*see*  
 24 *supra* Section II.C.), other entities' national contacts contribute nothing to the jurisdictional analysis.

25                  <sup>12</sup> Plaintiff also claimed that abstract statements made in the 2006 Report and Accounts of the  
 26 Candover Group, and published on the website of a subsidiary of Candover Investments PLC, aptly  
 27 describe the relationship between Candover Investments PLC and Equity Trust. Document 50 at 17.  
 28 However, the corporate websites of the subsidiaries of Candover Investments PLC are prepared by its  
 subsidiaries and are not controlled by Candover Investments PLC. *See* Declaration of Andrew  
 Moberly in Support of Reply of Candover Investments PLC ("Moberly Decl."), ¶ 2. Plaintiff  
 improperly attributed these statements to Candover Investments PLC without the necessary evidence  
 that its subsidiary is the alter ego or agent of Candover Investments PLC.



are insufficient to survive a motion to dismiss.” *See Rae Systems, Inc.*, 2005 U.S. Dist. LEXIS 39450, \*9-10.

Similarly, Plaintiff claimed that Candover Investments PLC owns and operates “\$2 billion worth of business in the United States” (Document 50 at 18), but merely listed companies in which Candover Investments PLC owns non-controlling minority interests.<sup>13</sup> That Candover Investments PLC owns non-controlling minority interests in these companies negates Plaintiff’s alter ego theory.<sup>14</sup>

Moreover, the contacts of the subsidiaries of Candover Investments PLC do not confer personal jurisdiction over Candover Investments PLC. “There is a presumption of corporate separateness that must be overcome by clear evidence that the parent in fact controls the activities of the subsidiary.” *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995). “Sole ownership of the subsidiary by the parent is not enough.” *Ryder Truck Rental, Inc. v. Acton Foodservices Corp.*, 554 F. Supp. 277, 279 (C.D. Cal. 1983). Rather, the record must indicate that “the parent dictates every facet of the subsidiary’s business – from broad policy decisions to routine matters of day-to-day operations.” *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (citations omitted); *see also Calvert*, 875 F. Supp. at 679.<sup>15</sup> Plaintiff presented no evidence that Candover Investments PLC dictates the business of its subsidiaries or is involved in their day-to-day operations. Plaintiff relied solely on the websites of Candover Investments PLC or its subsidiary, and publications found on these websites, but nothing on

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<sup>13</sup> Candover Investments PLC owns a 6.0% (fully diluted) indirect passive interest in Wood Mackenzie Group Limited, a 4.0% (fully diluted) passive interest in Springer Science + Business Media SA, a 1.4% (fully diluted) passive interest in Wellstream Holdings plc, and a 0.9% (fully diluted) passive interest in Aspen Insurance Holdings Limited. Moberly Decl., at ¶¶ 3-6. Candover Investments PLC does not control these entities. *Id.* Moreover, between September 1986 and September 2007, Candover Investments PLC owned approximately an 8.5% (fully diluted) passive interest in Dakota, Minnesota & Eastern Railroad Corporation (“DMERC”). *Id.* at ¶ 7. Candover Investments PLC recently sold its interest in DMERC to Canadian Pacific Railroad. *Id.* Candover Investments PLC did not control DMERC. *Id.* Between July 2004 and August 2007, Candover Investments PLC owned approximately a 2.5% (fully diluted) passive interest in Vetco International Limited, a British corporation. *Id.* at ¶ 8. Candover Investments PLC subsequently sold its interest. *Id.* Candover Investments PLC did not control Vetco International Limited. *Id.*

<sup>14</sup> Notably, Plaintiff failed to even allege what, if any, contacts these entities have with California to impute to Candover Investments PLC to support this Court’s exercise of personal jurisdiction.

<sup>15</sup> Under California law, inadequate capitalization of a subsidiary may alone be a basis for holding the parent corporation liable for the acts of its subsidiary, but Plaintiffs offer no evidence that any of the subsidiaries of Candover Investments PLC are undercapitalized. *See Doe v. Unocal Corp.*, 248 F.3d at 927.

1 these websites indicates that Candover Investments PLC exercises any control over the operations of  
 2 its subsidiaries. *See Carghani v. Pewag Austria G.m.b.H.*, No. CIV. S-05-0133 WBSJF, 2007 WL  
 3 415992, \*6-7 (E.D. Cal. Feb. 5, 2007).

4 Simply put, Plaintiff's alter ego argument lacks factual support, and the Court cannot therefore  
 5 impute to Candover Investments PLC the contacts of Equity Trust, other companies in which Candover  
 6 Investments PLC invested, or subsidiaries of Candover Investments PLC to support its exercise of  
 7 personal jurisdiction.

8 b) Plaintiff Failed to Prove Agency

9 To prove agency, Plaintiff must show by substantial credible evidence, that "the alleged  
 10 principal had the right to control the activities of the alleged agent." *In re Automobile Antitrust Cases I*  
 11 *& II*, 135 Cal. App. 4th 100, 120 (2005); *see also Sonora Diamond*, 83 Cal. App. 4th at 541 ("Control  
 12 is the key characteristic of the agent/principal relationship."). The foreign company must exercise "a  
 13 highly pervasive degree of control over the local subsidiary" and "veer into management and day-to-  
 14 day operations of the local subsidiary." *In re Automobile Antitrust Cases I & II*, 135 Cal. App. 4th at  
 15 120. Moreover, "jurisdiction will not lie when the parent is a true holding company, the business of  
 16 which is not operations but passive investment in a subsidiary company." *Id.* at 121. "Investment  
 17 alone is not a sufficient ground to exercise general jurisdiction, even if the foreign corporation could  
 18 have chosen to simply run the local business itself." *Id.* at 121.

19 But Plaintiff alleged no facts establishing that Candover Investments PLC participated in the  
 20 day-to-day activities of either the companies in which it invested, including Equity Trust, or of its  
 21 subsidiaries. *See infra* Sections II.E.1.a. Moreover, Candover Investments PLC is a holding company  
 22 in the business of investing.<sup>16</sup> The facts do not support this Court's exercise of personal jurisdiction  
 23 over Candover Investments PLC under an agency theory.

24  
 25 <sup>16</sup> Notably, *Estate of Sumrall v. Ill. Cent. Railroad Co.*, on which Plaintiff relied, is inapposite.  
 26 No. 2:06CV166KS-MTP, 2007 U.S. Dist. LEXIS 4890 (S.D. Miss. Jan. 23, 2007). In *Sumrall*, the  
 27 court held that the exercise of personal jurisdiction over the holding company was proper because the  
 28 holding company's own documents stated that it served Mississippi and the plaintiff's claims arose out  
 of the holding company's contacts with Mississippi. *Id.* at \*18-19. Plaintiff's claims, however, do not  
 arise out of any acts of Candover Investments PLC, and Plaintiff offers no documents published by  
 Candover Investments PLC stating that it conducts business in California or the United States.



1 **III. CONCLUSION**

2 For all the reasons set forth above and in its motion to dismiss, Candover Investments PLC  
3 respectfully requests that this Court grant its Motion to Dismiss For Lack of Personal Jurisdiction and  
4 Insufficient Service of Process pursuant to Federal Rule of Civil Procedure 12(b)(2) and 12(b)(5).  
5

6 Dated: October 18, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP

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